

November 8, 2012

Paisley Woodward
Producer, CBC News Vancouver
700 Hamilton Street
Vancouver, BC V6B 2R5

Re: CDSBC's Statement on Publication of Complaints and Discipline Matters

Dear Paisley,

Thank you for our conversations on November 1 and 6.

The *Health Professions Act* requires CDSBC to publish the outcomes of disciplinary proceedings that result in action being taken against a registrant. The public can find this information in CDSBC's annual report and on our website. We also track trends in complaints and publish generic case summaries in our registrant newsletter, the *Sentinel*, also available on our website.

You asked whether CDSBC could publish the number of complaints filed against individual dentists. In B.C., the Office of the Information and Privacy Commissioner considered this issue in relation to complaints about lawyers and upheld the decision of the Law Society not to release such information. The Commissioner ruled that publication of the mere fact of a complaint filed, even when dismissed, would result in "a significant likelihood of unfair damage" to the practitioner.

Since more than 90% of complaints against dentists are dismissed or result in only minor recommendations for change, we need to be careful to publish only where the public interest of protection from incompetent or unethical practitioners warrants. At present, the College does not publish a registrant's complaint history unless it relates to a resolution (through settlement or decision of a hearing panel) of an issue for which a citation has been issued, or the resolution of a complaint absent a citation where the complaint deals with a "serious matter" as defined in the legislation. Broadly speaking, a "serious matter" is one that, if it were to have gone to a hearing, would have related to a penalty that places limitations or restrictions on a person's practice, a suspension, or removal from the register. The CDSBC Board will be publishing a policy next year to address whether, when and how to publish in situations that fall below the "serious matter" threshold.

Your question about whether a registrant should be required to alert the College if they are the subject of legal action related to their practice is a good one, and will be considered in the policy analysis. So too your question as to whether the College can or should publish if/when a civil court has made a finding of negligence against a practitioner. I acknowledge your information relating to the Ontario College of Physicians and Surgeons on this point – perhaps signaling an evolution of policy. As we discussed, CDSBC will analyze this issue to determine where and how far it can go – without



compromising its ability to investigate and successfully resolve cases of competence and conduct. The College must remain unbiased in its dealings both in fact and in perception. The fact is that there are qualitative, quantitative and legal differences between competence/conduct issues over which the College has expertise and legal jurisdiction, and civil remedies, over which the courts have jurisdiction and expertise.

Also, the courts have drawn a clear distinction between findings of negligence in civil claims and findings of incompetence in professional discipline matters. They have held that a finding of negligence does not constitute a finding of professional incompetence or misconduct. Publication by us of civil court decisions does not, therefore, advance the cause of protection of the public. The College does this through setting and maintaining high standards for entry and retained licensure and by investigating/resolving complaints of conduct and competence. Simply put, there is no evidence to suggest that publication of civil suits protects the public in any way from incompetent or unethical practitioners.

Thank you again for taking the time to speak with us. We hope we have helped in your consideration of these complex and nuanced policy issues.



Jerome Marburg
Registrar and Chief Executive Officer